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September 25, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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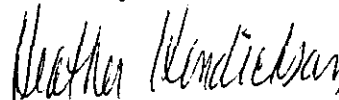
Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
c/o Vistrionix, Inc.
236 Massachusetts Avenue, N.W.
Suite 100
Washington, D.C. 20002

Re: Letter to Chairman Powell in *Virginia Arbitration Proceeding*,
CC Docket No. 00-218, 00-249, 00-251

Dear Ms. Dortch:

Enclosed please find three (3) copies of Z-Tel Communications, Inc.'s letter to Chairman Powell rebutting the September 4, 2002 letter from William M. Daley, President of SBC Communications, Inc., to Chairman Powell in the dockets listed above. Please do not hesitate to contact me at (202) 887-1284 should you have any questions concerning this matter.

Sincerely,



Heather T. Hendrickson

cc: Service List
Enclosures

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September 25, 2002

VIA FEDERAL EXPRESS

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Re: Virginia Arbitration Proceeding, CC Docket Nos. 00-218, 00-249, 00-251

Dear Chairman Powell:

Z-Tel Communications, Inc., ("Z-Tel") through its undersigned counsel, files this letter in the *Virginia Arbitration Proceeding* to respond to a recent letter sent to Chairman Powell from William M. Daley, President of SBC Communications, Inc. ("SBC").¹ In its letter, SBC asserts that the Commission should use the *Virginia Arbitration* proceeding to "assume its leadership role and to clarify the proper application of TELRIC."² Throughout its letter, SBC implies that the state commissions are misapplying the Commission's TELRIC methodology.³ Specifically, SBC stated that "... some of the key inputs that are being used in state cost proceedings are at odds with market realities and inconsistent with the core assumptions inherent in TELRIC itself."⁴

SBC's depiction of state commissions' alleged "failure" to correctly apply the Commission's TELRIC standard completely contradicts myriad factual findings of this Commission. The Commission has repeatedly commended state commissions for their commitment to TELRIC principles. In fact, the Commission has never once criticized the state

¹ Letter from William M. Daley, President of SBC Communications to Michael K. Powell, Chairman of the FCC (Sep. 4, 2002) (*SBC Letter*).

² *Id.* at 1.

³ *Id.*

⁴ *Id.* at 2.

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commissions for setting TELRIC rates “too low.” In fact, the exact opposite is true: the only negative statements that the Commission has ever made regarding state TELRIC determinations has been related to rates that appeared to be set **too high**.⁵

The following is a list of statements made by the Commission applauding the states’ commitment to TELRIC principles. The following statements have been collected from the Commission’s decisions approving state 271 applications in New Jersey, Maine, Georgia/Louisiana, Vermont, Rhode Island, Arkansas/Missouri, Pennsylvania, Massachusetts, Kansas/Oklahoma, Texas and New York. Also provided are statements from the Commission’s recent order in *WorldCom, Inc. v. Verizon*.⁶ Importantly, the Commission’s Order in this case, which reaffirms its deference to states to establish appropriate UNE rates using TELRIC principles, was issued July 23, 2002, just six days after the Commission issued its decision in the *Virginia Arbitration* proceeding.

**I. COMMISSION STATEMENTS AFFIRMING STATE COMMISSIONS’
APPROPRIATE USE OF TELRIC**

A. New Jersey 271 Order

- “The New Jersey Board’s decision to allow the recovery of such costs [vertical features] in the per-minute switching rate fully complies with our rate structure rules. We find no TELRIC error in the New Jersey Board’s handling of the vertical features cost issue.”⁷
- “In addition, we have stated that inputs used in our Synthesis Model are not binding on states for determining prices for UNEs. We are satisfied that the New Jersey Board carefully evaluated this issue, properly rejected Verizon’s proposed use of 100 percent growth

⁵ For example, in the Commission’s order approving Verizon’s Rhode Island 271 Application, the Commission stated, “[d]espite the fact that the Rhode Island Commission has demonstrated a commitment to basic TELRIC principles and has correctly applied these principles in many instances, for the reasons discussed below, we cannot find that Verizon has proven that its UNE rates were adopted through a proceeding which correctly applied TELRIC principles in all instances.” See *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3318, ¶32 (rel. Feb. 22, 2002) (*Rhode Island 271 Order*).

⁶ *WorldCom, Inc. v. Verizon New England Inc., et al*, Memorandum Opinion and Order, File No. EB-02-MD-017, FCC 02-219 (rel. July 23, 2002) (*WorldCom Complaint*).

⁷ *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, Memorandum Opinion and Order, WC Docket No. 02-67, ¶41 FCC 02-189 (rel. June 24, 2002).

switches, and validly established what it considered to be more appropriate and state-specific switching discounts.”⁸

B. Maine 271 Order

- “In determining the appropriate UNE rates, the Maine Commission demonstrated a commitment to basic TELRIC principles, and we applaud the Commission’s efforts to establish TELRIC-compliant rates based on the information available to it.”⁹
- “The record demonstrates that the Maine Commission carefully examined the cost studies submitted by Verizon and concluded, in many instances, that such studies did not yield TELRIC-compliant rates. For these rates, as discussed above, the Maine Commission recalculated the rates using modified inputs or assumptions, or, alternatively, adopted a different cost model that complied with the TELRIC standard....”¹⁰

C. Georgia/Louisiana 271 Order

- “As we observed above, the Georgia Commission recognized the importance of making modifications to BellSouth’s cost model to ensure that the rates it established were forward looking, and in fact did so in several other instances.”¹¹
- “Based on the record, we conclude that the Louisiana Commission made a reasonable determination of BellSouth’s loading factors that are in accordance with TELRIC principles. In the course of its proceedings, the Louisiana Commission rigorously examined BellSouth’s cost studies. The Louisiana Commission considered fact-intensive, specific information and detailed issues that may vary by cost model and state, such as how loading factors were developed, as part of the process of setting rates based on TELRIC methodology.”¹²

⁸ *Id.* at ¶44.

⁹ *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maine*, Memorandum Opinion and Order, CC Docket No. 02-61, FCC 02-187, ¶20 (rel. June 19, 2002).

¹⁰ *Id.*

¹¹ *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9047-48, ¶53 (rel. May 15, 2002).

¹² *Id.* at 9050-51, ¶60.

D. Vermont 271 Order

- “We commend the Vermont Board for the prodigious effort of its small staff to establish TELRIC-compliant rates and note that its orders in the Vermont UNE rate proceeding correctly apply basic TELRIC principles.”¹³
- “... by diligently and actively conducting proceedings beginning in 1997 to set TELRIC prices, implement performance measures ... the Vermont Board has laid the necessary foundation for our review and approval.”¹⁴

E. Rhode Island 271 Order

- “We commend the Rhode Island Commission for its prodigious effort to establish TELRIC-compliant rates and note that its orders in the UNE rate proceeding demonstrate a commitment to basic TELRIC principles.”¹⁵

F. Arkansas/Missouri 271 Order

- “We find that the Missouri Commission generally followed TELRIC principles.”¹⁶
- “The orders of the Missouri Commission provide numerous indicia that it has followed a forward-looking approach that is consistent with TELRIC.”¹⁷
- “As noted above, the Missouri Commission has demonstrated its commitment to TELRIC, and is in the process of reexamining a number of rates in ongoing rates cases.”¹⁸

G. Pennsylvania 271 Order

- “In reviewing Verizon’s Pennsylvania pricing, we find that the Pennsylvania Commission generally followed basic TELRIC principles, and that the resulting rates are within the range that reasonable application of TELRIC would produce.”¹⁹

¹³ *Application by Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Service in Vermont*, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7635, ¶19 (rel. Apr. 17, 2002).

¹⁴ *Id.* at 7626-27, ¶3.

¹⁵ *Rhode Island 271 Order* at 3315-16, ¶28 (rel. Feb. 22, 2002).

¹⁶ *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20745, ¶53 (rel. Nov. 16, 2001).

¹⁷ *Id.* at 20745, ¶54.

¹⁸ *Id.* at 20749, ¶62.

- “The Pennsylvania Commission has expended an enormous amount of effort in its ratemaking proceedings, and we applaud the Pennsylvania Commission for the tremendous amount of work it has done. The Pennsylvania Commission’s approach is generally compliant with our TELRIC methodology.”²⁰

H. Massachusetts 271 Order

- “The Massachusetts Department has expended an extraordinary amount of effort in its *Consolidated Arbitrations* and other rate-making proceedings. We applaud the Massachusetts Department for the tremendous amount of work it has done, and we expect that it will adopt appropriate cost-based UNE rates in its current proceeding.”²¹

I. Kansas/Oklahoma 271 Order

- “We conclude that Kansas’ recurring UNE rates fall within the reasonable range of TELRIC prices. Furthermore, the Kansas Commission’s orders show a consistent application of TELRIC principles in the setting of recurring prices.”²²

J. Texas 271 Order

- “As in that proceeding, the rate dispute here is fairly new, the relevant state commission [Texas Commission] has demonstrated a commitment to TELRIC, and provision will be made for retrospective rate adjustments once permanent rates are set.”²³

¹⁹ *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17453, ¶55. (rel. Sep. 19, 2001).

²⁰ *Id.* at 17456, ¶62.

²¹ *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988, 9005-06, ¶36 (rel. Apr. 16, 2001).

²² *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6264, ¶55 (rel. Jan. 22, 2001).

²³ *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18476, ¶239 (rel. June 30, 2000).

K. New York 271 Order

- “We stress that we place great weight on the New York Commission’s active review and modification of Bell Atlantic’s proposed unbundled network element prices, its commitment to TELRIC-based rates, and its detailed supporting comments concerning its extensive, multi-phased network elements rate case, as discussed below.”²⁴
- “Additionally, the New York Commission, as discussed above, has a substantial track record of setting other applicable prices at TELRIC rates.”²⁵

L. WorldCom v. Verizon Order

- “The initial deference due the states in setting UNE rates derives from the statutory framework, pursuant to which states establish rates in the first instance.”²⁶
- “Although commenters questioned whether the DTE would adopt TELRIC-compliant rates on a going-forward basis, the Commission expressed confidence that the DTE would set UNE rates in compliance with the Act and the Commission’s implementing rules.”²⁷
- “The Commission presumed that the DTE, like other state commissions, would examine the issues relevant to costs during the course of its ongoing rate case and set rates within the range that a reasonable application of TELRIC principles would produce.”²⁸

²⁴ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4081-82, ¶238 (rel. Dec. 22, 1999).

²⁵ *Id.* at 4091, ¶259.

²⁶ *WorldCom Complaint* at n.78.


²⁷ *Id.* at ¶9.

²⁸ *Id.*

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As evidenced by the abundance of endorsing statements made by the Commission with regard to the states' application of TELRIC, the Commission need not "clarify the proper application of TELRIC." The states have proven time and again their ability to evaluate costing data, establish inputs, and develop UNE rates that both satisfy the unique market conditions of a particular state as well as comply with TELRIC principles and assumptions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Hazzard", with a small "AA" mark to the right.

Michael B. Hazzard

Heather T. Hendrickson

Counsel to Z-Tel Communications, Inc.

CC: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Mr. Matthew Brill, Legal Advisor to Commissioner Abernathy
Mr. Jordan Goldstein, Legal Advisor to Commissioner Copps
Mr. Daniel Gonzalez, Legal Advisor to Commissioner Martin
Mr. William Maher, Chief Wireline Competition Bureau
Ms. Marlene Dortch, Commission Secretary
Mr. William Daley, President SBC Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing letters were delivered this 25th day of September, 2002, via first-class U.S. mail to:

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By: _____

Stacy Smith